IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Summons for Judgment No. 267 of 2007
in
Summary Suit No. 960 of 2007

Supreme Petrochem Ltd. ..Plaintiffs

vs.

Bhansali Engineering Polymers Ltd. and another ..Defendants.

Mr.F.Devitre, Sr.Counsel with Mr.Birendra Saraf, Mr.D.Juvekar, Mr.Y.Gabrid and Mr.Mayank Mehta i/b Mr.Mahernosh Humranwala for plaintiffs.

Mr.Yusuf Iqbal Yusuf with Mrs.Anvee Mehta i/b M/s Yunus and Associates for defendant no.1

Mr.Harinder Toor i/b M/s N.N.Amin and Co. for defendant no.2.

CORAM: S.C.DHARMADHIKARI J
15th October,2007

P.C.

1. This is a summary suit filed by the plaintiffs against defendant no.2 and Allahabad Bank, which is defendant no.2.

2. At the out set and after taking instruction from the plaintiffs so also in the light of the order that is being passed against defendant no.1 at this stage by consent, Mr.Devitre, learned Senior Counsel appearing for the plaintiffs does not pray for any order in this summons for judgment as against defendant no.2. However, he submits

that depending upon the compliance by defendant no.1 with the order that is passed in this summons for judgment, liberty be granted to the plaintiffs to renew their request for judgment against defendant no.2. Summons for judgment is dismissed as withdrawn with liberty as prayed for as against defendant no.2.

3. Since the summons for judgment is not pressed at this stage as against defendant no.2, it is not necessary to go into rival contentions and each of them are kept open for being raised at later stage.

4. After this summons for judgment was argued for some time and on Mr.Devitre praying for deposit of Rs.2,82,41,543 or atleast the principal amount of Rs.2,06,46,057/- or in any event a substantial part thereof, the learned Counsel appearing for the first defendant, after taking instructions from the representative of the first defendant who is duly authorised by the first defendant, makes a statement that within a period of 8 weeks from today the first defendant would secure 50% of the decreetal claim of Rs.2,82,41,543/- (Rupees two crores eighty two lacks, forty one thousand and five hundred and forty three only) in the form of a Bank guarantee of a Nationalised Bank to the

satisfaction of the Prothonotary and Senior Master, High Court, Bombay. Statement accepted. he submits that this statement is made strictly without prejudice to the rights and contentions of the first defendant in suit no.1663 of 2005. He submits that the said suit is a substantive suit filed against the plaintiffs herein and prior in point of time. He submits that without entering into the larger controversy and inviting even at this stage, prima facie observations on merits thereof, the above mentioned security in the form of a Bank Guarantee would be furnished.

5. Mr.Devitre, initially urged that the plaintiffs are insisting upon substantial deposit in as much as the goods have been taken delivery of and bills of exchange are also duly accepted. However, upon being pointed out that a substantive suit is pending in prior of time and there is some delay in moving this Court on the part of the plaintiffs, he leaves the matter to the Court.

6. In my view, interest of justice would be subserved by accepting the statement of the first defendant. Accordingly the summons for judgment is disposed of in the above terms.

7. This summons for judgment is not pressed against defendant no.2 and stands dismissed with liberty as stated hereinabove upon the first defendant furnishing the Bank Guarantee of a Nationalised Bank in the sum of Rs.1,41,00,000/- (Rupees One crore and forty one lacs) within a period of 8 weeks from today, leave to defend the suit upon usual terms including filing of the written statement and discovery and inspection. In the event of the first defendant committing default consequences in law shall follow and the plaintiffs would be at liberty to apply for a decree as prayed for. Needless to state that all contentions on merits of the controversy of all the parties to the suit are kept open and in case compliance is made by the first defendant both suits shall be decided uninfluenced by the above order. Summons for judgment stands disposed of in the terms aforesaid. Needless to state that the Bank Guarantee to contain a stipulation that in case the amount thereunder has to be paid over the same would be paid over with interest at the prevailing bank rate.

(S.C.DHARMADHIKARI J.)